Quality Health Services of P.R., Inc. d/b/a Hospital San Cristobal *and* Unidad Laboral de Enfermeras(os) y Empleados de la Salud. Case 24–CA–011630

June 25, 2012

DECISION AND ORDER

BY MEMBERS HAYES, GRIFFIN, AND BLOCK

On July 21, 2011, Administrative Law Judge George Alemán issued the attached decision. The Respondent filed an exception with supporting argument and the Acting General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exception and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order as modified and set forth in full below.[1]

ORDER

The National Labor Relations Board orders that the Respondent, Quality Health Services of P.R., Inc. d/b/a Hospital San Cristobal, Ponce, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Unidad Laboral de Enfermeras(os) y Empleados de la Salud (the Union) as the exclusive collective-bargaining representative of the employees in the following bargaining unit:

> All Licensed Practical Nurses and Respiratory Therapy Technicians, Operating Room and Radiology Technicians employed by the Employer at the Hospital located in Cotto Laurel Ward, Ponce, Puerto Rico, excluding all other hospital employees including Executives, Administrators, Supervisors, Administrative Employees and Managers, and Guards as defined by the National Labor Relations Act.
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> All registered nurses employed by the Employer, excluding all other hospital employees including Executives, Administrators, Supervisors, Administrative Employees and Managers, Guards as defined by the Act.

(b) Making any changes in wages, hours, or other terms and conditions of employment of the employees represented by the Union without first bargaining with the Union as their exclusive collective-bargaining representative.

(c) Unilaterally changing the practice of paying the nursing employees in the above-described bargaining unit their incentive/differential earnings over and above their base salary rate.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Before implementing any changes in wages, hours, or other terms and conditions of employment of unit employees, notify and, on request, bargain with the Union as the exclusive collective-bargaining representative of employees in the above-described bargaining unit.

(b) On request, bargain with the Union as the exclusive collective-bargaining representative of the nursing employees concerning the implementation of the minimum wage requirements of Law 27.

(c) Rescind the change in the nursing employees' incentive/differential earnings that was unilaterally implemented on March 1, 2010.

(d) Reinstate the practice of paying nursing employees their incentive/differential earnings over and above their base salary rate.

(e) Make whole all nursing employees for any loss in wages or other losses they may have sustained, with interest, as a result of the unlawful March 1, 2010 decision to discontinue the practice of paying nursing employees their incentive/differential earnings over and above their base salary rate, as set forth in the remedy section of the judge's decision as amended in this decision.

(f) Within 14 days after service by the Region, post at its Ponce, Puerto Rico facility copies of the attached no-

[1] The Acting General Counsel contends that the Respondent's exception is insufficient and should be deemed waived under Sec. 102.46(2) of the Board's Rules and Regulations. Because the Respondent adequately explains the basis for its exception, we reject this contention.

We shall modify the judge's recommended Order to provide for the posting of the notice in accord with *J. Picini Flooring*, 356 NLRB No. 9 (2010). For the reasons stated in his dissenting opinion in *J. Picini Flooring*, Member Hayes would not require electronic distribution of the notice.

We amend the judge's remedy to provide that backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), rather than with *F. W. Woolworth Co.*, 90 NLRB 289 (1950). The *Ogle Protection* formula applies where, as here, the Board is remedying "a violation of the Act which does not involve cessation of employment status or interim earnings that would in the course of time reduce backpay." *Ogle Protection Service*, supra at 683; see also *Pepsi America, Inc.*, 339 NLRB 986, 986 fn. 2 (2003).

We shall modify the judge's recommended Order to conform to the Board's standard remedial language and substitute a new notice conforming to the Order as modified.

tice, in English and Spanish, marked "Appendix."[2] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 1, 2010.

(g) Within 21 days after service by the Region, file with the Regional Director of Region 24 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to bargain with Unidad Laboral de Enfermeras(os) y Empleados de la Salud (the Union) as the exclusive collective-bargaining representative of our employees in the following appropriate unit:

All Licensed Practical Nurses and Respiratory Therapy Technicians, Operating Room and Radiology Technicians employed by the Employer at the Hospital located in Cotto Laurel Ward, Ponce, Puerto Rico, excluding all other hospital employees including Executives, Administrators, Supervisors, Administrative Employees and Managers, and Guards as defined by the National Labor Relations Act.

All registered nurses employed by the Employer, excluding all other hospital employees including Executives, Administrators, Supervisors, Administrative Employees and Managers, Guards as defined by the Act.

WE WILL NOT change the practice of paying the nursing employees in the above-described bargaining unit their incentive/differential earnings over and above their base salary rate.

WE WILL NOT change your wages, terms, or conditions of employment without first notifying the Union and giving it an opportunity to bargain.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

WE WILL, before implementing any changes in your wages, hours, or other terms and conditions of employment, notify and, on request, bargain with the Union as your exclusive collective-bargaining representative.

WE WILL, on request, bargain with the Union as your exclusive collective-bargaining representative concerning the change to the nursing employees' wages as of March 1, 2010.

WE WILL rescind the change in the nursing employees' incentive/differential earnings that was unilaterally implemented on March 1, 2010.

WE WILL make whole all nursing employees for any loss in wages or other losses they may have sustained, with interest, as a result of the unlawful March 1, 2010 decision to discontinue the practice of paying nursing employees their incentive/differential earnings over and above their base salary rate.

QUALITY HEALTH SERVICES OF P.R., INC. D/B/A
HOSPITAL SAN CRISTOBAL

Ana Beatriz Ramos Fernandez, Esq., for the General Counsel.
José A. Oliveras-González, Esq., for the Respondent.
Harold Hopkins, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

GEORGE ALEMÁN, Administrative Law Judge. This case was tried in San Juan, Puerto Rico, on March 22–23, 2011, pursuant

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

to a complaint issued on December 30, 2010,[1] by the Regional Director for Region 24 of the National Labor Relations Board (the Board) against Quality Health Services of P.R., Inc. d/b/a Hospital San Cristobal (the Respondent).[2] The complaint alleges that the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act (the Act) by, on or about March 18, unilaterally changing and/or reducing the wages of its employees without giving the Union which represents the employees prior notice and an opportunity to bargain over the changes. On January 31, 2011, the Respondent filed an answer to the complaint denying the commission of any unfair labor practice.

All parties at the hearing were afforded a full and fair opportunity at the hearing to present oral and written evidence, to examine and cross-examine witnesses, and to argue orally on the record. On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by counsel for the General Counsel[3] and the Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Puerto Rico corporation, is a health care facility in Ponce, Puerto Rico, where it is engaged in providing acute health care services at its facility. During the past 12 months, the Respondent, in the course and conduct of its operation, derived gross revenues in excess of $250,000, and, during the same period, purchased and received at its Hospital facility goods valued in excess of $50,000 directly from points outside the Commonwealth of Puerto Rico. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and a health care institution within the meaning of Section 2(14) of the Act. It further admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Factual Background

Since around 2002, the Union has served as exclusive collective-bargaining representative for several groups of Respondent's employees, including two separate bargaining units of nursing employees.[4] In 2002, it entered into a collective-bargaining agreement with the Respondent, which expired on February 28, 2006, containing, among other things, provisions describing employee salary increases and other benefits, such as incentives and differentials, for the nursing personnel, and how such amounts were to be calculated. Some of these incentives or pay differentials include added compensation for nurses willing to work the apparently less desirable evening and midnight shifts, those working in the Hospital's high-risk departments such as intensive care, emergency room, delivery room, surgery, recovery, and nursery, and payment for special courses taken by nursing employees to improve their knowledge and skills in the field. (Tr. 33–34.) The contract provides that the incentive/differential amounts paid to employees were not to be calculated as part of an employee's base salary but rather were to be paid over and above the base salary rate. (See GC Exh. 2, art. XXIX.)[5]

Testimony by Respondent's director of human resources, Candie Rodriguez, makes clear that the above contract provision, regarding how incentive/differential pay was to be paid, was put into effect and, presumably, remained an established practice from at least 2002, when the contract first went into effect, until 2010, when, as discussed below, the practice was changed. Thus, Rodriguez testified that the incentive/differential amounts nursing employees were earning at its Hospital were not treated as part of an employees' base salary rate, but rather were being paid to employees over and above, or in addition to, their basic rate of pay. (Tr. 31.)

Employee Amaritis Leon, a graduate nurse at Respondent's Hospital, confirmed the practice of paying incentive/differentials over and above the employees' base salary rate. Thus, she testified that in 2009, she received $200 monthly shift differential pay for working the midnight (11 p.m,–7 a.m.) shift, and that this amount was paid in addition to, or over and above, her $1500 base salary rate. (Tr. 116, 120.)

In July 2005, while the contract was still in effect, the Commonwealth of Puerto Rico enacted a law, known as Law 27, establishing a minimum wage for nursing personnel in the private sector. (See GC Exh. 6[b].) Thus, under Law 27, the minimum wage was set as follows: practical nurses—$1500; nurses with an Associates Degree without experience—$2000; nurses with a Bachelor's Degree but no experience—$2350; nurses with a Bachelor's Degree and experience—$2500. The above-salary schedule was to be phased in over a 3-year period. Law 27 does make clear that "[t]he new salary schedules to be established shall apply without impairing the terms of the different collective bargaining agreements in effect at the time this Act becomes effective." This provision was intended to avoid issues

[1] All dates herein are in 2010, unless otherwise indicated.

[2] The charge underlying the complaint was filed on September 17, 2010, and amended on December 14, 2010, by Unidad Laboral de Enfermeras(os) y Empleados de la Salud (the Union).

[3] Counsel for the General Counsel has also filed a Motion to Correct certain grammatical and related inaccuracies in the transcripts, and to correct GC Exh. 2(b), which is the English version of GC Exh. 2(a), by including a p. "56" which was inadvertently omitted from the record. No objection to the corrections having been filed or received, counsel for the General Counsel's Motion to Correct is hereby granted, and made a part of the record as GC Exh. 13.

[4] One such nursing unit, identified as "Unit B-24-RC-7308" includes "All Licensed Practical Nurses and Respiratory Therapy Technicians, Operating Room and Radiology Technicians employed by the Employer at the Hospital located in Cotto Laurel Ward, Ponce, Puerto Rico, excluding all other hospital employees including Executives, Administrators, Supervisors, Administrative Employees and Managers, and Guards as defined by the National Labor Relations Act (N.L.R.B.)". The other nursing unit, identified as "Unit 24-RC-8124'B'" includes "All registered nurses employed by the Employer, excluding all other hospital employees including Executives, Administrators, Supervisors, Administrative Employees and Managers, Guards as defined by the Act."

[5] Testimonial evidence is referred to herein as Tr. (transcript) followed by the page number(s); GC Exh. and R. Exh. represent, respectively, a General Counsel or Respondent Exhibit; GC Br. and R. Br. represent reference to the General Counsel or Respondent's posttrial brief. GC Exh. 2[b] is an English translation of relevant portions of GC Exh. 2[a], the 2002–2006 collective-bargaining agreement in Spanish.

regarding the "impairment of contractual obligations" from arising. (GC Exh. 6[b], p. 2.)

As its collective-bargaining agreement with the Union was still in effect when Law 27 was enacted, the Respondent, at that time, chose not to implement the salary increases called for by the new law. In July 2005, the parties executed a stipulation, to be effective from March 1, 2006, to February 28, 2010, wherein they made certain changes to employee salaries and other provisions of the 2002–2006 collective-bargaining agreement, and extended the same to February 28, 2010. (See GC Exh. 3.)

On March 1, the day after the parties' collective-bargaining agreement expired, the Respondent implemented the minimum wage provisions of Law 27. At the same time, it altered its existing practice regarding how certain incentives/differentials were to be paid. Thus, on March 9, Rodriguez notified Respondent's finance director, Marianita Collazo Rivera, of Respondent's decision to implement the provisions Law 27, and sent her a chart containing the names of Respondent's nursing employees, their job classifications, the base salary earned by each employee and the new salary they would be earning to bring them in compliance with the minimum wage requirements of Law 27. (See GC Exh. 4[b].) On page 5 of the chart, Rodriguez listed some of the employee incentives (rotation incentive; permanent shift incentive, special area incentive, incentive for education courses) that were now to be included as part of the employee's base salary, and which of them (uniforms, stipends, Christmas bonus, years of service) would remain excluded. Rodriguez informed Collazo that March 1, would be the effective date for the reclassification of employee salaries, and asked her to verify the information and to take the appropriate action.

By letter dated March 18, Rodriguez notified the nursing employees that, because the collective-bargaining agreement was no longer in effect, the Respondent was implementing the minimum salary requirements of Law 27, and that employees would be seeing adjustments to their salaries, retroactive to March 1, in paychecks being issued that day. (GC Exh. 5[b].) She explained that the adjustments included "several incentives" but did not specify what those incentives were.[6]

Union representative, Ariel Echevarria, first learned of the above changes on March 18, when employees brought the memo to his attention. The following day, March 19, Echevarria wrote to Rodriguez, asking that she provide the Union with a list of employees whose salaries were adjusted pursuant to Respondent's implementation of Law 27. There is no evidence to indicate that the Union was, at any time prior to March 18, notified by the Respondent of its intent to implement the provisions of Law 27 on March 1, or its decision, in conjunction with said implementation, to change how the nursing employees' earnings from incentives and differentials were to be paid. Rodriguez, in fact, admitted that she had not notified the Union of the changes before sending out her March 18 letter to employees.[7] Rodriguez complied with the Union's information request by letter dated March 24, attached to which was a list containing the names of its "Graduate and Practical Nurses" represented by the Union who received increases pursuant to Law 27. (See GC Exh. 7, GC Exh. 8.)

Echevarria wrote again to Rodriguez on April 16, pointing out that in her March 18 letter, Rodriguez had made reference to several incentives that were included in the wage adjustments made to the nursing employees' salaries, and asked Rodriguez to describe in writing, within 5 working days, what those incentives were. Rodriguez replied by letter dated April 28, that the incentives referenced in her March 18, letter included "area," "special course," and "permanent shift" incentives, explaining that these incentives "have always" been "allocated" to the nurses' salary.

On November 30, Rodriguez sent Echevarria a letter, responding to the latter's request for additional information. Attached to the letter is a chart, reflecting the period March 11–November 7, containing the names of unit employees, their department, the permanent shift worked, and the "permanent shift" incentive amounts paid to employees. (GC Exh. 11.)

B. The Parties' Contentions

While admitting that the Union was not given prior notice or an opportunity to bargain, The Respondent nevertheless asserts that its March 1 decision to implement the minimum wage requirements of Law 27, following the February 28 expiration of the parties' agreement, was not unlawful as it was statutorily required to do so. As it was legally obligated to carry out the mandate of Law 27 to raise the minimum wage rates of its nursing staff to the amounts set forth therein, it was, the Respondent further contends, under no obligation to notify and bargain with the Union over the changes, including the change in how incentive/differential earnings would be paid.

Counsel for the General Counsel does not appear to quarrel with the general proposition that the Respondent was statutorily obligated by Law 27, to raise the minimum wage of its nursing employees to amounts mandated in the statute. She does, however, contend that in seeking to comply with Law 27's minimum wage requirements, the Respondent could not, without first giving the Union notice and an opportunity to bargain, unilaterally alter or change its established practice regarding how the incentive and differential amounts earned by nursing employees were to be calculated and paid. Thus, she argues that the Respondent's decision to end its long-held and contractually established practice, requiring that incentive and differential pay earned by nursing employees be calculated separately from, and be paid over and above, their base salary rate, and to require instead that the incentive and differential earnings be included and calculated as part of the base salary rate, amounted to an unlawful unilateral change in the nursing employees wages, hours, and terms and conditions of employees, and violated Section 8(a)(5) and (1) of the Act. I find merit in counsel for the General Counsel's argument.

[6] Rodriguez' letter does mention the incentives that are not included in the adjustment: "Christmas Bonus, Incentive for Years of Service, Benefits, Incentives for rotating shifts, Uniform Payments, etc."

[7] The Respondent, in its opening remarks, acknowledged that the Union first learned of the changes on March 19, more than 2 weeks after the unilateral change was made. (Tr. 20.)

C. Discussion

It is well settled that a unilateral and material change in employee terms and conditions of employment regarding a mandatory subject of bargaining violates Section 8(a)(5) of the Act. *NLRB v. Katz*, 369 U.S. 736 (1962). *American Medical Response of Connecticut*, 356 NLRB 1222, 1244 (2011). Mandatory subjects of bargaining are those comprised in the phrase "wages, hours, and other terms and conditions of employment" set forth in Section 8(d) of the Act. Incentives and differential pay are mandatory subjects of bargaining as they clearly fall within Section 8(d)'s definition of "wages." *Waxie Sanitary Supply*, 337 NLRB 303, 314 (2001); *Northwest Graphics, Inc.*, 342 NLRB 1288, 1289, 1530 (2000); *Raven Government Services*, 331 NLRB 651, 660 (2000); *Royal Baking Co.*, 309 NLRB 155, 156 (1992); *Bunker Hill Co.*, 208 NLRB 27, 32 (1973).

The manner by which nursing employees here were being paid their incentive/differential earnings prior to March 1, e.g., over and above their base salary rate, was also a mandatory subject of bargaining that the Respondent was not at liberty to change unilaterally without giving the Union prior notice and an opportunity to bargain. This particular method of payment, as noted, was contractually established by the parties in 2002, and remained the practice until discontinued by the Respondent on March 1, in conjunction with its implementation of Law 27. The payment of incentives and differentials over and above the base salary rate of employees had, therefore, been established as a term and condition of employment both by contract and by virtue of it having become an established past practice.[8] See *Hospital San Cristobal*, 356 NLRB 699 (2011).

The Respondent, as noted, does not quarrel with the above facts. Still, it argues that it had no choice but to eliminate the practice of paying employees their incentive/differential pay over and above their base salary rate in order to comply with Law 27's minimum wage requirements, which compliance was mandatory and not optional.

Initially, I do not doubt, nor does counsel for the General Counsel seem to question, that the Respondent was required to comply with the minimum wage provisions of Law 27 following expiration of the contract. The language of Law 27, which includes a provision calling for the imposition of fines for noncompliance, lends credence to Respondent's assertion that implementation of Law 27 was mandatory and not discretionary.

However, while compliance with Law 27 may have been mandatory, the statute itself does not mandate, or in any way dictate, how employers were to achieve compliance with its provisions. Law 27 did nothing more than establish minimum wage requirements for nursing employees in Puerto Rico based on their education level and experience. It contains no provision, nor does it explicitly or implicitly instruct, direct, or suggest to employers, on how best to achieve compliance. Thus, a plain reading of Law 27 makes clear that employers, like the Respondent here, had absolute discretion to decide what, if any, steps should be taken, or changes made to their payroll structure, to ensure compliance with Law 27. Nor did Law 27 preclude employers from exceeding the minimum wage rates established therein if they chose to do so.

Thus, the Respondent here was not required to discontinue the practice of paying employees their incentive/differential pay over and above their base salary rate in order to comply with Law 27. There were other options available to it that would have allowed it to comply with Law 27 without discontinuing the practice. The Respondent, for example, could have simply raised the wages of all nursing employees in the amount needed to bring their pre-March 1, base salary rates up to the levels called for by Law 27, and still kept intact its practice of paying nurses their incentive/differential earnings over and above their newly established post-March 1, base salary rates.

The Respondent, however, chose a different option. It decided instead to give wage increases only to those employees not receiving incentive/differential pay, thereby raising their pre-March 1 base salary rate to the minimum wage levels mandated by Law 27. Employees receiving incentive and differential pay, however, did not fare as well. Thus, rather than grant the latter the same wage increase needed to also bring their base salary rate up to Law 27 level, as it did with other employees, the Respondent instead used the incentive/differential pay these employees were already entitled to and earning, in place of a wage increase, to bring their base salary rate to Law 27's minimum wage requirements.

The Board has held that when an employer has discretion over how to implement certain changes in employee wages, hours, or other terms and condition of employment mandated or imposed on it by statute or regulation, it has a duty to notify and bargain with the collective-bargaining representative of its employees over how such changes should be implemented before making any such changes. See *Sheltering Pines Convalescent Hospital*, 255 NLRB 1195 (1981); also *United Parcel Service*, 336 NLRB 1134, 1135 (2001); *Armour & Co.*, 280 NLRB 824, 827 (1986). The Respondent here, as noted, had, and indeed, did exercise, such discretion when it chose to end the practice of paying employees their incentive/differential pay over and above their base salary rate as a way of complying with Law 27's minimum wage requirements. As this particular practice was a mandatory subject of bargaining, the Respondent was not at liberty to unilaterally discontinue or end it without first giving the Union notice and an opportunity to bargain over that decision.

The Respondent nevertheless argues, implicitly, that it did not have to bargain with the Union over its decision to end the practice because the decision had little or no impact on employee wages, or on any other term and condition of employment. It claims that elimination of the practice did not result in a reduction in pay because employees still receive their incentive/differential pay, albeit, now as part of their base salary rate

[8] Although the parties' agreement expired the day before the Respondent unilaterally changed its practice on March 1, the Respondent had a continuing obligation, in the absence of impasse, to abide by the terms and conditions of employment set out therein, including the obligation to continue paying incentives/differential over and above the employees' base salary rate. . See *Acme Press*, 353 NLRB No. 73 fn. 2 (2008) (not reported in Board volumes), citing *NLRB v. Katz*, supra. Also, *Pantry Restaurant*, 341 NLRB 243 (2004); *Convergence Communications, Inc.*, 339 NLRB 408, 411 (2003); *Big Track Coal*, 300 NLRB 951 (1990); *Benjamin F. Wininger & Son*, 286 NLRB 1177, 1180 (1987); *Bay Area Sealers*, 251 NLRB 89 (1980).

rather than in addition or as a supplement to their base rate. The Board has, indeed, held that an employer is not required to bargain over changes so minimal as to have little or no impact on employee wages, or terms and conditions of employment. *Toledo Blade Co.,* 343 NLRB 385, 388 (2004); *W-I Forest Products Co.*, 304 NLRB 957, 959 (1991). However, the Respondent's claim that its decision had little or no impact on employee wages is simply wrong and belied by the facts.

First, employees receiving incentive/differential pay effectively had their wages reduced when the Respondent, as noted, opted not to increase their base salary rate, while increasing that of other employees, in connection with its implementation of Law 27's minimum wage requirements. Second, and more importantly, these employees also saw their wages reduced as a result of Respondent's March 1 decision to end its longstanding practice of paying them their incentive/differential pay over and above their base salary rate. Prior to March 1 these employees, while earning the same base salary rate as other employees not receiving incentive/differential pay, nevertheless received higher wages because their incentive/differential earnings were paid to them over and above their base salary rate, while the wages of employees not entitled to such perquisites were limited to their base salary rate. Following the Respondent's March 1 discontinuance of the above practice, all employees, whether or not receiving incentive/differential pay, were, as readily admitted by Rodriguez, earning the same wages. Clearly, the Respondent's decision not to grant a wage increase to employees receiving incentive/differential pay, as it did with other employees, and to instead use the incentive/differential pay they were already entitled to and receiving as a way of raising their base salary rate to minimum wage levels called for by Law 27, resulted in a net loss in pay for these employees in an amount equal to their incentive/differential earnings.

The Respondent's assertion, therefore, that its discontinuance of the practice of paying employees their incentive/differential earnings over and above their base salary rate, had no impact whatsoever on their wages, is clearly without merit. Rather, the facts, as discussed above, make patently clear that employees receiving incentive/differential pay sustained a real and substantial reduction in their wages as a result of the discontinuance of the practice. The Respondent's claim that no harm was done here because employees continue to receive incentive/differential pay is somewhat disingenuous, for, clearly, from the perspective of employees entitled to such perquisites for having chosen to work less desirable shifts or in high risks area of the Hospital, the concept of incentive/differential pay now exists in name only. For all practical purposes, these employees no longer receive incentive/differential pay, as their wages now, with the so-called incentive/differential compensation included as part of their base salary rate are, as readily admitted by Rodriguez, no different from that of other employees.

The Respondent's March 1 decision here to change how employees' incentive/differential pay was to be paid can best be described by the phrase, "robbing Peter to pay Paul," for, in seeking to comply with Law 27, the Respondent simply changed the nature of the additional compensation employees were receiving for working less desirable shifts or in high risk areas from an incentive/differential benefit to a wage increase. The net result of its decision is that, while employees entitled to incentive/differential pay had their wages increased to bring them in line with Law 27's minimum wage levels, the increase came at the expense of their incentive/differential benefits, and, as noted, resulted in a net loss in wages for them in an amount equal to their incentive/differential earnings.

Accordingly, I find that the Respondent's unilateral decision to end the practice of paying employees their incentive/differential earnings over and above their base salary rate, which is a mandatory subject of bargaining, had a real, substantial, material, and adverse effect on employee wages and other terms and conditions of employment. Consequently, I further find that the Respondent's admitted failure to give the Union prior notice and an opportunity to bargain over that decision was unlawful, and violated Section 8(a)(5) and (1) of the Act, as alleged.

CONCLUSION OF LAW

By unilaterally discontinuing, as of March 1, the practice of paying incentives and differentials earned by nursing employees over and above their base salary rate without giving the Union prior notice or an opportunity to bargain over this change in its employees' terms and conditions of employment, the Respondent has engaged in an unfair labor practice affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having unilaterally and unlawfully discontinued its practice of paying the incentive/differential compensation earned by nursing employees over and above their base salary rate, the Respondent shall be ordered to reinstate the practice, and to make whole all employees for any loss in wages they may have sustained as a result of the Respondent's unlawful unilateral discontinuance of the practice.

Backpay will be computed as set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950). Interest on the amounts due will be determined in the manner described in *New Horizons*, 283 NLRB 1173 (1987), with the interest being compounded on a daily basis as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

The Respondent shall also be required to post, in English and in Spanish, a notice to employees.

[Recommended Order omitted from publication.]